

Special Civil Application No 3667 of 83
with
Special Civil Application No.3668 of 1983

Date of decision: 05/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

ISHWERBHAI HARIBHAI RABARI & ORS.

vs

STATE OF GUJARAT & ORS.

Appearance: Shri Harin P. Raval, Advocate, for Shri P.M.
Raval, Senior Advocaes, for the Petitioners (in
both matters)

Shri D.N. Patel, Asst. Govt. Pleader, for
Respondents Nos. 1 to 4 (in both matters)

Shri S.R. Brahmabhatt, Advocate, for Messrs.
N.J. Mehta & Associates, for Respondents Nos.
(absent) (in Special Civil Application No. 3667
of 1983)

Respondents Nos. 5 to 8 in Special Civil
Application No. 3668 of 1983 served

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

Practically identical orders passed by the Special Secretary (Appeals), Revenue Department, at Ahmedabad (respondent No.2 herein) on behalf of the State of Gujarat (respondent No.1 herein) on 31st December 1982 under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) are under challenge in both these petitions. Common questions of law and fact are found arising in both these petitions. I have therefore thought it fit to dispose it of by this common judgment of mine.

2. The facts giving rise to these petitions move in a narrow compass. It appears that parcels of land bearing survey Nos. 125 and 121 of village Rasana (the disputed lands for convenience) were designated as gauchar land from the time of the erstwhile State of Palanpur. It appears that some small parcels of land from the disputed lands came to be granted by the Deputy Collector of Palanpur (respondent No.3 herein) inter alia to respondents Nos. 5 to 8 in each petition. Thereupon the petitioners moved the Collector in revision under sec. 211 of the Code for cancellation of grant inter alia in favour of respondents Nos. 5 to 8 in each petition. After hearing the parties, by his order passed on 27th August 1981, respondent No.3 cancelled the grant inter alia in favour of respondents Nos. 5 to 8 in each petition. Its copy is at Annexure A to each petition. That aggrieved respondents Nos. 5 to 8 in each petition. They therefore therefore separately went in revision under sec. 211 of the Code before respondent No.2 acting on behalf of respondent No.1. By practically identical orders passed on 31st December 1982, respondent No.2 set aside the order at Annexure A to each petition. Its copy is at Annexure B to each petition. The aggrieved petitioners have thereupon approached this Court by means of these petitions under art. 226 of the Constitution of India for questioning the correctness of the impugned order at Annexure B to each petition.

3. Learned Advocate Shri Raval for the petitioners in each case appears to be right in his submission that the petitioners ought to have been heard before accepting the revisional application preferred by respondents Nos. 5 to 8 in each case. It transpires from the impugned order at Annexure B to each petition that the present petitioners were not made parties to the revisional proceedings in each case. It may be noted that the order at Annexure A to these petitions was passed at the instance of the petitioners herein. In that view of the matter, respondents Nos. 5 to 8 ought to have made the petitioners herein as parties-respondents in the revisional proceedings before respondent No. 2 acting on behalf of respondent No. 1 questioning the correctness of the order at Annexure A to each petition. Even if they have failed to do so, respondent No. 2 ought to have seen that the impugned order at Annexure A to each

petition was passed at the instance of the petitioners herein and they ought to have been made parties respondents in the revisional proceedings before respondent No. 2 in each petition. Since the petitioners in each case were not heard with respect to the revisional proceedings before respondent No. 2 in each petition, the impugned order at Annexure B to each petition deserves to be quashed and set aside on this ground alone.

4. It transpires from the impugned order at Annexure B to each petition that the matter was remanded by respondent No.3 to respondent No. 4 inter alia for ascertaining whether or not the gaucher land assigned for grazing cattle was adequate keeping in mind the number of cattles in the village. The grievance voiced by the petitioners in these petitions is that, if respondents Nos. 5 to 8 in each petition are allotted lands, the grazing land available for cattles of the village will not be adequate for the purpose. Respondent No. 2 ought to have realised that the impugned order at Annexure A to each petition was an order of remand inter alia in the light of the query whether or not the land available as pasture was sufficient keeping in mind the number of cattles in the village. In that view of the matter, respondent No. 2 was not justified in interfering with the impugned order at Annexure A to each petition.

5. There is one more aspect to be seen in the case. It is the case of the petitioners that the disputed lands were assigned as grazing lands for cattles of village Rasana since the time of the erstwhile State of Palanpur. It is possible that they might have been vested in the concerned village panchayat under sec. 96 of the Gujarat Panchayats Act, 1961. In that view of the matter, it was necessary for respondent No.4 to ascertain whether or not the lands were resumed by the State Government and any part of it could be allotted in favour of any one. The material on record does not give any clear indication in that regard. Respondent No. 2 ought to have realised that aspect of the case as well.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure B to each petition cannot be sustained in law. It has to be quashed and set aside. The matters deserve to be remanded to respondent No.4 pursuant to the impugned order at Annexure A to each petition for his fresh decision according to law in the light of the order of remand at Annexure A to this petition and also in the light of this judgment of mine.

7. In the result, both these petitions are accepted. The impugned order passed by respondent No. 2 on behalf of respondent No.1 on 31st December 1982 at Annexure B to each petition is quashed and set aside. The matter is remanded to respondent No. 4 to each petition for restoration of the

proceeding to file and for his fresh decision according to law
in the light of this judgment of mine. Rule is accordingly made
absolute to the aforesaid extent in each petition with no order
as to costs.
